

The Mexican criminal law system

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Context

This document is intended to give you basic information on how the Mexican criminal law system functions. It is not a substitute for legal advice, which can only be provided by a lawyer qualified to practice in Mexico. It should also be read in conjunction with the brochure [A Guide for Canadians Imprisoned Abroad](#).

If you break the laws of another country, you are subject to the judicial system of that country. Being a foreigner or not knowing the local laws is not an excuse. Global Affairs Canada can neither protect you from the consequences of your actions nor override the decisions of local authorities.

The Mexican and Canadian criminal law systems are significantly different. This can increase the stress and practical problems arising from arrest and imprisonment in Mexico. For example, please note that in Mexico there is no jury system.

The Government of Canada will seek to ensure you are not penalized for being a foreigner and that you are neither discriminated against nor denied justice because you are Canadian. It cannot, however, seek preferential treatment for you or try to exempt you from the due process of local law. The Government of Canada cannot interfere in the judicial system of another country, just as Canadians would not stand for another government interfering in Canada's judicial process.

For further information on the services consular officials can and cannot provide, please consult the

brochure [A Guide for Canadians Imprisoned Abroad](#) and the [Canadian Consular Services Charter](#) page.

Mexico recently completed a comprehensive reform of its judicial system across all Mexican states with the adoption of the adversarial system in place of the inquisitorial system. Key among the substantial changes are the presumption of innocence, due process as well as new trial procedures. Trials must now be held publically, and are based on terms of equality between the victim and the defendant, in which both parties produce evidence (oral arguments) directly before a judge who shall make a judgement based on the evidence presented in court. In this respect, the new system is considerably more similar to Canadian criminal trial procedures.

Your choice of legal representation in Mexico can be critically important and should be made with care. Consular officials can provide a list of lawyers who practice in the area of law related to your particular type of case and who may have represented Canadians in the past. They cannot, however, recommend specific lawyers. You may prefer to hire a lawyer who is not on the list. **This decision remains your responsibility.** For further information, consult “Hiring a foreign lawyer” in the brochure [A Guide for Canadians Imprisoned Abroad](#).

Arrest and detention

Please Note: If you are travelling to an [INTERPOL member country](#) you may be subject to an [INTERPOL Notice](#).

Mexican criminal law is applicable to both citizens of Mexico and foreigners who commit crimes within the territory of Mexico.

According to Article I of the Political Constitution of the United Mexican States, all individuals in the country shall enjoy the guarantees established therein; in that sense, both nationals and foreigners in the national territory shall enjoy the guarantees and rights established in the Mexican Constitution.

In the Mexican criminal law system, there are state and federal offenses. Offenses related to organized crime, drug trafficking, human trafficking, taxes and customs operations are normally federal offenses. An arrest can be made by local, state or federal police. If you are accused of committing a federal crime, you will be turned over to the federal police and your trial will take place in a federal court.

After arrest, you are entitled at any phase of the criminal proceeding to a proper legal defense (legal counsel), either by a public defender or by a private defender chosen by you to enforce your rights. If you are the victim or the injured party of a crime, you are entitled at any phase of the criminal proceedings to assistance by a legal counsel to enforce your rights.

All criminal proceedings are conducted in Spanish. Under the Mexican Constitution, you are entitled to have a translator or interpreter appointed by the Mexican government to help during questioning by judicial authorities if you do not understand Spanish. You are also entitled to an oral translation of any statement written in Spanish that you are required to sign. The skills of Spanish-English interpreters can vary greatly, and skilled Spanish-French interpreters are not as easily available.

Under Mexican law, you do not have to give incriminating testimony or answer incriminating questions. You should, however, answer questions related to identity, age, address, occupation, citizenship and other non-incriminating personal information. When you are initially held by the police, you may feel pressured to speak before having the opportunity to communicate with a lawyer. You do not have to yield to such pressure and you have the right to remain silent. Your silence should not be

used against you at any point in the criminal proceedings. You may insist on speaking with a lawyer.

Your Rights under the Vienna Convention on Consular Relations

If you are detained or arrested abroad and wish to have Canadian consular officials notified, you should communicate that request clearly to the Mexican authorities. **The Mexican authorities have an obligation, under the [Vienna Convention on Consular Relations](#), to advise you of your right of access to a consular representative. They are not, however, obliged to inform a Canadian consular post of your detention or arrest, unless you ask them to do so.**

Under the Convention, Mexican authorities are also required to forward to a Canadian consular post any communication you address to the consular post. This is in accordance with your rights to communicate with, and have access to, a consular official. For example, if you write a letter to the Embassy of Canada or another Canadian consular office in Mexico, that letter must be delivered. These rights must be exercised in conformity with the laws and regulations of Mexico.

If you choose to talk to Canadian consular officials, any information you give them will remain confidential, **subject to the provisions of Canada's [Privacy Act](#)**. It will not normally be passed on to anyone other than the consular officials concerned with your case without your permission. However, under the Privacy Act, personal information may be disclosed in certain circumstances, such as in cases where disclosure would clearly benefit you, where the public interest in disclosure clearly outweighs any invasion of your privacy, or pursuant to a court order. Please consult the [Consular Services Privacy Notice Statement](#) for more details.

At your meeting with a consular official, please inform him/her if the Mexican authorities did not inform you of your right to request that Canadian officials be advised of your arrest or detention, or at any time denied you the right to communicate with, or have access to, a Canadian consular official.

Dual nationality is legally recognized in Mexico. However, citizens of Mexican origin are considered to be Mexican citizens under the judicial system. It is important that you declare yourself being a Canadian citizen as well at the time of your arrest and when giving your statement. The Embassy of Canada might not be notified and may therefore be limited in its ability to provide you with consular services if you have only identified yourself as a Mexican citizen, and therefore considered by Mexican authorities to be a Mexican citizen. See [Travelling as a dual citizen](#) for more information.

Investigation and bail

Under the new Mexican criminal system, pre-trial detention is an exception. Pre-trial detention is only ordered for serious offenses such as voluntary homicide, rape, fraud, organized crime, drug related, kidnapping, violent crime using weapons and explosives, and crime against homeland security. Pre-trial detention will also be applied in cases of crimes where other preventive measures are not sufficient to guarantee:

- the defendant's appearance in court;

- the successful progress of the investigation;
- the protection of the victim, witnesses or the community;
- or, when the defendant is being prosecuted for committing an intentional crime or has been previously convicted.

Detention will also occur if the accused is caught in the act or there is a warrant for the arrest, whether the crime is serious or not.

For certain offences considered not serious, the Ministerio Público will first arrange for a mediation unit to help the parties resolve their conflict (usually by payment of restitution money) to avoid having to go to trial.

If you are arrested, the police will take you to the Ministerio Público who will determine what kind of offence you committed and if it warrants pre-trial detention. The Ministerio Público has a 48 hours deadline in which to make this determination. If the deadline is not met, you will be released, but you may have to comply with one or several preventive measures imposed by the judge, such as (the following list is not exhaustive):

- appearance at court or before any authority selected by the judge on set dates (your Canadian passport may be retained by the judicial authority to prevent you from leaving the country)
- payment of a financial guarantee
- deposit of restitution money
- freezing of assets (property and/or financial)
- prohibition to leave the country or the jurisdiction determined by the judge
- restraining order
- house arrest

A preliminary hearing is conducted to determine whether there is enough evidence to require a trial. At the preliminary hearing, the pre-trial judge or control judge (Juez de Control) ensures that you are informed of your fundamental rights throughout the criminal proceeding, including the right to be represented by legal counsel. You will be asked to provide a statement or you may state your wish not to do so. The Ministerio Público then verbally explains the charges against you and is required to produce sufficient evidence to establish probable cause to determine that a crime was committed and that it is probable that you committed it or participated in its commission. The judge either confirms that there is enough evidence to continue, by issuing a document called “auto de vinculación a proceso” or the judge may dismiss the case and issue a document to confirm that there is not enough evidence to continue, called “auto de no vinculación a proceso”. The latter does not prevent the Ministerio Público from continuing with the investigation.

The pre-trial judge sets a deadline for the closing of the investigation, which should not exceed two months for crimes deserving a maximum imprisonment of 2 years and up to 6 months for crimes punishable by over 2 years of imprisonment.

Once the investigation has concluded, the Ministerio Público has 15 days to either:

- Dismiss the case (called Sobreseimiento)
- Request for the suspension of the proceeding

- File charges in writing containing accurate data set forth by the law.

The foregoing does not mean that the defendant cannot be arrested. The competent authority may arrest a person by means of an arrest (or re-arrest) warrant, on an urgent case, by being caught in the act of committing a crime or immediately after committing a crime, regardless of whether the crime deserves pre-trial detention or not, or whether the Ministerio Público requests so or not. Notwithstanding such an arrest, the defendant may request for his/her liberation, in case the pre-trial detention is not applicable in the crime for which the defendant is being accused.

The criminal trial

In the new adversarial system, the parties present evidence directly and orally before the court. Opportunities to examine and cross-examine evidence and witnesses occur in an open and transparent manner. The judge must be present at all hearings and will make a decision based on the merits of the evidence presented before him or her. **Before the trial begins**, the intermediate (preparatory) phase of the Oral Proceeding is initiated. Its purpose is to review the admission of evidence, as well as the purging of facts in dispute that are the matter of the Oral Proceeding.

The Oral Proceeding is the phase through which evidence is introduced to the judge by the Ministerio Público and the defendant in order to determine the defendant's alleged responsibility.

The Ministerio Público, the defendant (with his/her defender), witnesses, experts or interpreters attend the oral proceedings.

Following the oral proceedings, the judge shall order a recess to deliberate privately in order to pronounce the judgment.

In case of exoneration, the judge shall order the immediate release of the defendant and the cancellation of any payment he/she made to guarantee his/her appearance in court (referred to as *garantias de comparecencia*) and restitution of moneys deposited at the same time.

Within 10 days following the notification of the judgment, the parties may present a written appeal to the judge who pronounced the judgment.

The amparo

The amparo is a procedural feature of the Mexican judicial process that resembles a motion of objection in Canada's legal system. Its intent is to protect your rights under the Mexican Constitution if you are accused of a crime. At any point during the trial, your lawyer may propose filing an amparo if he or she considers that your rights are not being respected.

There are two types of amparo. The first is filed during the initial trial ("first instance"), which is usually related to a technicality. The second type of amparo is filed after the first appeal and is based on the sentence. If it succeeds, it could result in a release or a reduction of sentence.

Before you decide whether or not to file an amparo, it is important that you ask your lawyer to explain what it is and how it works so that you can understand whether it would be useful or not in your trial, the additional time involved in resolving your case, and how it would impact on

your legal fees.

Duration of a trial and sentencing

When the maximum possible sentence is less than two years, the judge has up to four months to reach a verdict. When the maximum possible sentence is more than two years, the judge has up to one year to reach a verdict. Nevertheless, there are several factors that can impact on the duration of a trial and result in a timeframe in excess of the prescribed time limits. Amparo proceedings, translation, and changes in legal representation can all create delays, which are sometimes quite lengthy. Likewise, delays can occur when witnesses do not appear after being subpoenaed. Should your case pass the prescribed limit, you can ask your lawyer to clarify the procedure with the judge.

If a verdict results in a prison sentence, the time you have already spent in prison counts toward the full sentence. You, as well as the prosecutor, have the right to appeal the sentence, usually within ten working days.

The appeal is submitted in writing. Once the arguments have been received a hearing date will be set. The final decision will be done in writing.

Transfer to a Canadian prison

Canada has a [Transfer of Offender Treaty](#) with Mexico that enables Canadians convicted of offences in Mexico to serve their prison sentence in a Canadian penal institution if both the Canadian and Mexican governments consent to the transfer. Transfers are not automatically granted. **An application for transfer can be submitted only after you have been convicted and sentenced.** For further information on transfer requests, please consult the brochure [A Guide for Canadians Imprisoned Abroad](#).

Clemency intervention in death penalty cases

There is no death penalty in Mexico.

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